

David Krieger, Esq.  
Nevada Bar No.: 9086  
HAINES & KRIEGER, LLC  
1020 Garces Ave.  
Las Vegas, NV 89101  
Phone: (702) 880-5554  
FAX: (702) 385-5518  
Email: info@hainesandkrieger.com  
Attorney for Walter L. Carrasco

E-FILED: May 7, 2010

**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF NEVADA**

<b>In Re:</b>	)	<b>Case No. BKS-09-31596-MKN</b>
	)	<b>Chapter 13</b>
	)	
<b>Walter L. Carrasco,</b>	)	<b>Hearing Date: OST REQUESTED</b>
	)	<b>Hearing Time: OST REQUESTED</b>
	)	
<b>Debtor(s).</b>	)	
	)	
	)	

---

**MOTION TO VACATE ORDER VACATING THE AUTOMATIC STAY AS TO  
US BANK NATIONAL ASSOCIATION AS TRUSTEE, ITS ASSIGNEES AND/OR  
SUCCESSORS AND THE SERVICING AGENT WELLS FARGO BANK**

COMES NOW the Debtor, **Walter L. Carrasco**, by and through David Krieger, Esq., of the law firm of HAINES & KRIEGER, LLC, and moves the Court pursuant to Rule 9024 of the Bankruptcy Rules and Rule 60 of the Federal Rules of Civil Procedure for an order to VACATE THE ORDER VACATING THE AUTOMATIC STAY AS TO US BANK NATIONAL ASSOCIATION AS TRUSTEE, ITS ASSIGNEES AND/OR SUCCESSORS AND THE SERVICING AGENT WELLS FARGO BANK entered by the Court in the above matter.

DATED May 7, 2010

HAINES & KRIEGER, LLC  
By: /s/ David Krieger, Esq.  
David Krieger, Esq.

**POINTS AND AUTHORITIES**

**THE COURT MAY RELIEVE A PARTY FROM AN  
ORDER DUE TO MISTAKE, INADVERTENCE,  
SURPRISE OR EXCUSABLE NEGLIGENCE.**

Pursuant to Bankruptcy Rule 9024, FRCP 60(b) applies where a party requests relief from judgment or order entered by the Bankruptcy Court.

FRCP 60(b) states that "[o]n motion and upon such terms as are just, the Court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: mistake, inadvertence, surprise, or excusable neglect..." Under Section 11 U.S.C. §350(b) of the Bankruptcy Code a case may be reopened in the court in which such case was closed to administer assets, to accord relief to the Debtor, or for other cause.

**STATEMENT OF FACTS**

1. Debtor filed the instant Chapter 13, Case Number 09-31596, on November 16, 2009.
2. On or about, February 22, 2010, US BANK NATIONAL ASSOCIATION AS TRUSTEE, ITS ASSIGNEES AND/OR SUCCESSORS AND THE SERVICING AGENT WELLS FARGO BANK filed a motion to vacate the automatic stay.
3. On March 31, 2010, a hearing was held on US BANK NATIONAL ASSOCIATION AS TRUSTEE, ITS ASSIGNEES AND/OR SUCCESSORS AND THE SERVICING AGENT WELLS FARGO BANK's Motion relief and same motion was granted by the Court.

4. Debtor is engaged in loan modification discussions with lender.
5. Lender and Debtor are still discussing loan modification terms and Debtor is attempting to comply with creditors document requests.
6. **There is a presently a notice of trustee sale recoded for the Debtor's residence as of May 6, 2010 and it is expected that the Debtor's home will be sold on or about May 25, 2010 without the immediate intervention of this Court.**
7. The Debtor has paid and continued to pay their monthly Chapter 13 trustee payments. Their current Chapter 13 plan provides for the adequate protections payment to be made to lender in the amount of 0.025% per month until the loan modification is finalized.
8. On or about May 5, 2010, Debtor was advised that Creditor again lost their documents which had been previously submitted on at least two prior occasions, January 6, 2010 and again on March 26, 2010.
9. Lender has been acting in bad faith and representing to the Court misstatements about the status and progress on the Debtor's part for the loan modification.
10. It was upon these prior Creditor representations that your Honor Granted relief from stay on or about April 12, 2010.

WHEREFORE, the Debtor now requests that Your Honor:

1. Vacate the Order Vacating the Automatic Stay as to US BANK NATIONAL ASSOCIATION AS TRUSTEE, ITS ASSIGNEES AND/OR SUCCESSORS AND THE SERVICING AGENT WELLS FARGO BANK;
2. Reinstate the automatic stay as to US BANK NATIONAL ASSOCIATION AS TRUSTEE, ITS ASSIGNEES AND/OR SUCCESSORS AND THE SERVICING AGENT WELLS FARGO BANK;

3. Compel US BANK NATIONAL ASSOCIATION AS TRUSTEE, ITS ASSIGNEES AND/OR SUCCESSORS AND THE SERVICING AGENT WELLS FARGO BANK to accept future payments from the Debtor;
4. Compel US BANK NATIONAL ASSOCIATION AS TRUSTEE, ITS ASSIGNEES AND/OR SUCCESSORS AND THE SERVICING AGENT WELLS FARGO BANK to provide an accounting of how all post-petition payments made by the Debtor have been applied since the instant Chapter 13 filing;
5. Compel US BANK NATIONAL ASSOCIATION AS TRUSTEE, ITS ASSIGNEES AND/OR SUCCESSORS AND THE SERVICING AGENT WELLS FARGO BANK to provide a reinstatement amount, if any, to the Debtor within 10 days;
6. Grant such other relief as Your Honor finds appropriate.

Dated: May 7, 2010

/s/David Krieger, Esq.  
David Krieger, Esq.  
Attorney for Debtor(s)